

REMARKS

The Office Action mailed September 19, 2007 has been received and carefully noted. Claims 1-19 are currently pending in the subject application and are presently under consideration.

Claims 10, 14, and 19 have been amended herein. A listing of claims can be found on pages 2-4 of this Reply.

Favorable reconsideration of the pending claims is respectfully requested in view of the following amendments and comments.

I. Examiner Interview Summary

The Applicants thank the Examiner and his Supervisor for courtesies extended during the telephonic interview with Jonathan S. Miller (Reg. No. 48,534) and Olivia J. Tsai (Reg. No. 58,350) on November 27, 2007. The subject matter of claims 1, 3, and 5 were discussed.

Regarding independent claim 1, the Examiner conceded that the cited portions from the Office Action mailed September 19, 2007 did not disclose “a route determination module to select the set of source locations having the set of products based on a cost factor and a utilization of a capacity of a set of transports,” but referred to the “problem-solver” in the end of paragraph 0018 of Arunapuram *et al.* (US 2002/0019759) as teaching this aspect.

With respect to claim 3, the Examiner conceded that Arunapuram *et al.* did not disclose “a loading module to simulate a loading of the shipment of the set of products into the set of transports.” The Examiner indicated that he would do a further search before deciding if this aspect was allowable subject matter.

In claim 5, the Examiner conceded that the cited paragraph from the Office Action mailed September 19, 2007 did not disclose “searching iteratively through the set of shipping rule groups in order of priority for a shipping solution,” but introduced paragraphs 0055 and 0113, as well as Figure 6 of Arunapuram *et al.* for describing this aspect.

No agreement was reached during the interview. The Applicants indicated that review of the newly cited sections would be presented in the present Response.

II. Rejection of Claims 1-19 Under 35 U.S.C. § 102(b)

Claims 1-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Arunapuram *et al.* It is requested that this rejection be withdrawn for at least the following reason. Arunapuram *et al.* does not describe each and every element of the claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “***each and every element*** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added). In particular, independent claims 1, 4, 10, and 14 recite: “a route determination module ***to select the set of source locations*** having the set of products based on a cost factor and ***a utilization of a capacity of a set of transports***” (emphasis added) or analogous variations. Arunapuram *et al.* does not describe this aspect.

In the telephonic interview, the Examiner conceded that the cited portions noted in the Office Action mailed September 19, 2007 did not describe this aspect, but referred to the “problem-solver” described near the end of paragraph 0018 of Arunapuram *et al.* as teaching this aspect. The Applicants respectfully disagree.

Paragraph 0018 of Arunapuram *et al.* recites: “the problem-solver generates the most efficient load consolidations.” However, this characterization of the problem-solver introduced in the summary is unclear as to how “the most efficient load consolidations” are derived and how these load consolidations are used in relation to source location selection. In the detailed description of the cited reference, paragraphs 0069 and 0070 elaborate on the ambiguous description in the summary by explaining that shipments may be combined, so long as the shipments are compatible with each other and the trailer type. The problem-solver of the cited reference appears to effect “load consolidations” by placing shipments that have already been assigned carriers (and grouped in preparation for shipment at the shipment location) into fewer trailers when possible for the purpose of cost savings (*See* Arunapuram *et al.* at paragraphs 0069 and 0070). Since the products themselves appear to be ready for shipment, the location of the product has previously been determined; therefore, at the point of consolidation, source location would already be determined and not need to be selected (*See e.g.*, Arunapuram *et al.* at paragraph 0068, determining which carriers operate in the particular region(s) in which the order

must be serviced). Therefore, Arunapuram *et al.* is silent regarding “a route determination module ***to select the set of source locations*** having the set of products ***based on*** ... a utilization of a capacity of a set of transports” (emphasis added), since the source location appears to already have been selected prior to any consideration of consolidation by the problem-solver.

Furthermore, claims 3, 6, 11, and 17 recite: “a loading module to simulate a loading of the shipment of the set of products into the set of transports” or similar aspects. In the telephonic interview, the Examiner conceded that Arunapuram *et al.* did not describe this aspect. The Applicants also do not discern any part of Arunapuram *et al.* that expressly or inherently describes this aspect.

Claims 2 and 3 depend from independent claim 1, claims 5-9 depend from independent claim 4, claims 11-13 depend from independent claim 10, and claims 15-19 depend from independent claim 14, thus incorporating the limitations thereof. For at least the aforementioned reasons, Arunapuram *et al.* does not describe each and every element of claims 1-19. Accordingly, it is respectfully requested that these rejections be withdrawn.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Dated: 11/29, 2007

/Thomas M. Coester/


Thomas M. Coester

Reg. No. 39,637

1279 Oakmead Parkway
Sunnyvale, California 94085-4040
(310) 207-3800

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450, on November 29, 2007.



Lori Ciccio

11/29, 2007